

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Retailers' Occupation Tax

2) Code Citation: 86 Ill. Adm. Code 130

3) <u>Section Numbers:</u>	<u>Proposed Action:</u>
130.605	Amendment
130.2055	Amendment

4) Statutory Authority: 20 ILCS 2505/2505-25

5) A Complete Description of the Subjects and Issues Involved:

130.605: This rulemaking incorporates the change made in Public Act 96-1035, which amended the Illinois Vehicle Code (625 ILCS 5/3-603) to provide that a nonresident purchaser of a motor vehicle could operate the vehicle in Illinois without registration from the place of sale to the place of destination outside of the State for up to 30 days. This rulemaking provides that tax is not due if the purchaser certifies that it will not use the vehicle in Illinois for more than 30 days. With the proposed amendment, this regulation will be consistent with the changes imposed by Public Act 96-1035.

130.2055: This rulemaking adds the new language enacted by Public Act 98-0422. This rulemaking provides that beginning July 1, 2013, any local governments in Illinois or any agency or instrumentality of any such governmental body does not incur Retailers' Occupation Tax when it engages in the selling of fuel and petroleum products sold to or used by an air common carrier, certified by the carrier to be used for consumption, shipment, or storage in the conduct of its business as an air common carrier, for a flight that is engaged in foreign trade or is engaged in trade between the United States and any of its possession and that transports at least one individual or package for hire from the city of origination to the city of final destination on the same aircraft, without regard to a change in the flight number of that aircraft.

6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

7) Will this rulemaking replace any emergency rulemaking currently in effect: No

8) Does this rulemaking contain an automatic repeal date? No

9) Does this rulemaking contain incorporations by reference? No

10) Are there any other proposed rulemakings pending on this Part? Yes

Section Numbers

Proposed Action

Illinois Register Citation

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130.2080	Amendment	38 Ill Reg. 9171, May 2, 2014
130.ILLUSTRATION A	Amendment	38 Ill Reg. 9171, May 2, 2014

- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Debra M. Boggess
Associate Counsel
Legal Services Office
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794
(217) 782-2844

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None; local governments in Illinois or any agency or instrumentality of any such governmental body typically are not in the business of selling fuel and petroleum products to air common carriers.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2014

The full text of the Proposed Amendments begin on the next page:

SUBPART F: INTERSTATE COMMERCE

Section 130.605 Sales of Property Originating in Illinois; Questions of Interstate Commerce

- a) Where tangible personal property is located in this State at the time of its sale (or is subsequently produced in Illinois), and then delivered in Illinois to the purchaser, the seller is taxable if the sale is at retail.

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- 1) The sale is not deemed to be in interstate commerce if the purchaser or his representative receives the physical possession of the property in this State.
 - 2) This is so notwithstanding the fact that the purchaser may, after receiving physical possession of the property in this State, transport or send the property out of the State for use outside the State or for use in the conduct of interstate commerce.
 - 3) The place at which the contract of sale or contract to sell is negotiated and executed and the place at which title to the property passes to the purchaser are immaterial. The place at which the purchaser resides is also immaterial. It likewise makes no difference that the purchaser is a carrier when that happens to be the case.
- b) There are three exceptions to the rule that the sale is not deemed to be a sale in interstate commerce if the purchaser or his representative receives physical possession of the property in Illinois.
- 1) Except as otherwise provided in subsection (b)(1)(C), the tax is not imposed upon the sale of a motor vehicle in this State *even though the motor vehicle is delivered in this State*, if all of the following conditions are met: *the motor vehicle is sold to a nonresident; the motor vehicle is not to be titled in this State; and either a drive-away permit for purposes of transporting the motor vehicle to a destination outside of Illinois is issued to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code [625 ILCS 5/3-603], or the nonresident purchaser has non-Illinois vehicle registration plates to transfer to the motor vehicle upon transporting the vehicle outside of Illinois. The issuance of the drive-away permit or having the out-of-state registration plates to be transferred is prima facie evidence that the motor vehicle will not be titled in this State. [35 ILCS 120/2-5(25)]*
- A) Documentation of nonresidency. The exemption under subsection (b)(1) is available only to nonresidents. A vehicle purchased by an Illinois resident is not eligible for the exemption (even if the purchaser is only a part-time Illinois resident or has dual residency in both Illinois and another state, and, in the case of more than one purchaser, even if only one of the purchasers is an Illinois resident). Effective July 1, 2008, if a retailer claims the exemption under subsection (b)(1), the retailer must keep evidence that the purchaser is not a resident of Illinois, along with the records related to the sale (e.g., in the deal jacket).
- i) When the purchaser is a natural person, the best evidence of nonresidence is a non-Illinois driver's license. Retention of a copy of the purchaser's permanent non-Illinois driver's license in the records related to the sale is prima facie evidence that the purchaser is a nonresident eligible for the exemption under this subsection (b)(1). In

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addition, the retailer must also obtain and keep in the records related to the sale a certification from the purchaser in substantially the following form:

"I, (purchaser), under applicable penalties, including penalties for perjury and fraud, state that I am not an Illinois resident. I understand that if I am a resident of Illinois or use the motor vehicle in Illinois for ~~30 or more~~ than 30 days in a calendar year, I am also liable for tax, penalty and interest on this purchase."

- ii) When the purchaser is a natural person, failure to keep a copy of the purchaser's non-Illinois driver's license or the presence of a copy of the purchaser's Illinois driver's license in the records related to the sale creates a rebuttable presumption that the purchaser is an Illinois resident ineligible for the exemption under this subsection (b)(1). To rebut this presumption, the retailer must keep evidence of the nonresidency of the purchaser in the records related to the sale, such as a voter registration card listing a non-Illinois address, a copy of a purchase contract or lease agreement for a new residence outside of Illinois, a copy of a tax return from another state that declares residency in that other state, a credit report listing the primary address as out-of-state, property tax records claiming a homestead exemption for an out-of-state residence, or any other documentation that clearly shows that the purchaser is not an Illinois resident. In addition, the retailer must also obtain and keep in the records related to the sale a certification from the purchaser in substantially the following form:

"I, (purchaser), under applicable penalties, including penalties for perjury and fraud, state that I am not an Illinois resident. I understand that if I am a resident of Illinois or use the motor vehicle in Illinois for ~~30 or more~~ than 30 days in a calendar year, I am also liable for tax, penalty and interest on this purchase."

- iii) When the purchaser is not a natural person (e.g., corporation, partnership, limited liability company, trust, etc.), then the purchaser shall be deemed a resident of the state or foreign country under whose laws the purchaser was incorporated, created or organized, as well as the state or foreign country of the purchaser's commercial domicile, if different. When the purchaser is a grantor trust or other entity that claims it has no state or foreign country of incorporation, creation, organization and commercial domicile, then the purchaser's state or foreign country of residence shall be deemed to be the place of residency of the principal user of the vehicle and a copy of the user's non-Illinois driver's license or other evidence of non-Illinois residency must be kept by the retailer in the records related to the sale. When the purchaser is not a natural person, the retailer must obtain and keep in the records related to the sale a certificate from the purchaser that states substantially the following:

"(Purchaser) states, under applicable penalties, including penalties for perjury and fraud, that it is a (corporation, partnership, LLC, trust, etc.), incorporated, organized or created under the laws of (state or foreign country) and has its commercial

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domicile in (state or foreign country), or alternatively that it has no state or foreign country of incorporation, creation, organization and commercial domicile, but the principal user's state or foreign country of residence is (state). The undersigned has authority to sign this certification on behalf of the purchaser, and understands that in doing so, if the purchaser is a resident of Illinois or uses the motor vehicle in Illinois for ~~30 or~~ more than 30 days in a calendar year, it will be liable for tax, penalty and interest on this purchase."

- iv) If the retailer meets the requirements of subsection (b)(1)(A)(i), (ii) or (iii) to document the exemption, then, absent fraud, the Department shall pursue any claim that the exemption does not apply solely against the vehicle purchaser. If, however, the retailer does not meet the requirements of subsection (b)(1)(A)(i), (ii) or (iii) to document the exemption, then the exemption claimed by the retailer shall be disallowed subject to further review by the Department.
- B) When the motor vehicle is purchased for lease and delivery to a lessee, the provisions of subsection (b)(1) shall apply to the lessee as if the lessee is the purchaser of the motor vehicle.
- C) The exemption under this subsection (b)(1) does not apply if the state in which the motor vehicle will be titled does not allow a reciprocal exemption for a motor vehicle sold and delivered in that state to an Illinois resident but titled in Illinois. The tax collected under the Retailers' Occupation Tax Act on the sale of a motor vehicle in this State to a resident of another state that does not allow a reciprocal exemption shall be imposed at a rate equal to the state's rate of tax on taxable property in the state in which the purchaser is a resident, except that the tax shall not exceed the tax that would otherwise be imposed under the Retailers' Occupation Tax Act. (See 35 ILCS 120/2-5(25-5).)
- D) For purposes of this subsection (b)(1), the term "motor vehicle" does not include (list not exhaustive):
 - i) "watercraft" or "personal watercraft" as defined in the Boat Registration and Safety Act [625 ILCS 45] or any boat equipped with an inboard motor, regardless of whether the watercraft, personal watercraft or boat is sold individually or included with the sale of a trailer. If the watercraft, personal watercraft or boat is included with the sale of a trailer, the trailer may be an exempt "motor vehicle" under this subsection (b)(1), but the watercraft, personal watercraft or boat is not an exempt motor vehicle and tax is still owed on it. If the two items are sold together for one non-itemized price, and the trailer is exempt under this subsection (b)(1), only the gross receipts representing the selling price of the trailer are exempt. Please note that Section 130.540 requires separate transaction returns to be filed with the Department for each item of property sold by the retailer that is required to be titled or registered with an agency of Illinois government;

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- ii) "all-terrain vehicles" as defined in Section 1-101.8 of the Illinois Vehicle Code;
 - iii) "motorcycles", as defined in Section 1-147 of the Illinois Vehicle Code, that are not eligible for vehicle registration because they are not properly manufactured or equipped for general highway use;
 - iv) "motor driven cycles", as defined in Section 1-145.001 of the Illinois Vehicle Code, that are not eligible for vehicle registration because they are not properly manufactured or equipped for general highway use;
 - v) "off-highway motorcycles" as defined in Section 1-153.1 of the Illinois Vehicle Code; or
 - vi) "snowmobiles" as defined in Section 1-2.15 of the Snowmobile Registration and Safety Act [625 ILCS 40/1-2.15].
- 2) *Beginning July 1, 2007, the Retailers' Occupation Tax is not imposed on the sale of an aircraft, as that term is defined in Section 3 of the Illinois Aeronautics Act [620 ILCS 5/3], if all of the following three conditions are met:*
- A) *the aircraft leaves this State within 15 days after the later of either the issuance of the final billing for the sale of the aircraft, or the authorized approval for return to service, completion of the maintenance record entry, and completion of the test flight and ground test for inspection, as required by 14 CFR 91.407;*
 - B) *the aircraft is not based or registered in this State after the sale of the aircraft; and*
 - C) *the seller retains in his or her books and records and provides to the Department a signed and dated certification from the purchaser, on a form prescribed by the Department, certifying that the requirements of this subsection (b)(2) are met. The certificate must also include the name and address of the purchaser, the address of the location where the aircraft is to be titled or registered, the address of the primary physical location of the aircraft, and other information that the Department may reasonably require. [35 ILCS 120/2-5(25-7)] (See Section 130.120.)*
 - D) For purposes of this subsection (b)(2):
 - i) *"Based in this State" means hangared, stored, or otherwise used, excluding post-sale customizations, for 10 or more days in each 12-month period immediately following the date of the sale of the aircraft.*

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- ii) *"Registered in this State" means an aircraft registered with the Department of Transportation, Aeronautics Division, or titled or registered with the Federal Aviation Administration to an address located in this State. [35 ILCS 120/2-5(25-7)]*
- 3) The seller does not incur Retailers' Occupation Tax liability with respect to *the proceeds from the sale of an item of tangible personal property to a common carrier by rail or motor that receives physical possession of property in Illinois and that transports the property, or shares with another common carrier in transporting the property, out of Illinois on a standard uniform bill of lading showing the seller of the property as the shipper or consignor of the property to a destination outside Illinois, for use outside Illinois. [35 ILCS 120/2-5(17)]* The exception for sales to common carriers by rail or motor, which is described in subsection (b)(3), is also applicable to local occupation taxes administered by the Department.
- c) The tax does not extend to gross receipts from sales in which the seller is obligated, under the terms of his or her agreement with the purchaser, to make physical delivery of the goods from a point in this State to a point outside this State, not to be returned to a point within this State, provided that the delivery is actually made.
- d) Nor does the tax apply to gross receipts from sales in which the seller, by carrier (when the carrier is not also the purchaser) or by mail, under the terms of his or her agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State. The fact that the purchaser actually arranges for the common carrier or pays the carrier that effects delivery does not destroy the exemption. However, it is critical that the seller is shown as the consignor or shipper on the bill of lading. If the purchaser is shown as either the consignor or the shipper, the exemption will not apply.
- e) Sales of the type described in subsections (c) and (d) are deemed to be within the protection of the Commerce Clause of the Constitution of the United States.
- f) To establish that the gross receipts from any given sale are exempt because the tangible personal property is delivered by the seller from a point within this State to a point outside this State under the terms of an agreement with the purchaser, the seller will be required to retain in his or her records, to support deductions taken on his or her tax returns proof that satisfies the Department that there was an agreement and a bona fide delivery outside this State of the property that is sold. The most acceptable proof of this fact will be:
 - 1) If shipped by common carrier, a waybill or bill of lading requiring delivery outside this State;

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- 2) if sent by mail, an authorized receipt from the United States Post Office department for articles sent by registered mail, parcel post, ordinary mail or otherwise, showing the name of the addressee, the point outside Illinois to which the property is mailed and the date of the mailing; if the receipt does not comply with these requirements, other supporting evidence will be required;
 - 3) if sent by seller's own transportation equipment, a trip sheet signed by the person making delivery for the seller and showing the name, address and signature of the person to whom the goods were delivered outside this State; or, in lieu thereof, an affidavit signed by the purchaser or his or her representative, showing the name and address of the seller, the name and address of the purchaser and the time and place of the delivery outside Illinois by the seller; together with other supporting data as required by Section 130.810 of this Part and by Section 7 of the Act.
- g) Retailers who ship property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales. However, there is no exemption for property delivered in Illinois to foreign vessels. If foreign vessels purchase items of tangible personal property from Illinois retailers and have those items delivered to the vessels in an Illinois port, the sale is made in Illinois, the purchaser takes possession of the items in Illinois, and therefore, the sale is taxable.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART S: SPECIFIC APPLICATIONS

Section 130.2055 Sales by Governmental Bodies

- a) Sales by the State of Illinois and by Local Governments in Illinois

Effective August 1, 1961, the State of Illinois or any local governments in Illinois, or any agency or instrumentality of any such governmental body, incurs Retailers' Occupation Tax liability when it engages in the selling of tangible personal property at retail to the public other than in the performance of a governmental function. This includes the selling of fuel to users by airport authorities or other governmental bodies, except that, until June 30, 2013, it does not include the proceeds from the sale of fuel and petroleum products sold to or used by an air common carrier, certified by the carrier to be used for consumption, shipment or storage, in the conduct of its business or as an air common carrier, for a flight destined for or returning from a location or locations outside the United States without regard to previous or subsequent domestic stopovers. Beginning

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July 1, 2013, it does not include fuel and petroleum products sold to or used by an air carrier, certified by the carrier to be used for consumption, shipment, or storage in the conduct of its business as an air common carrier, for a flight that is engaged in foreign trade or is engaged in trade between the United States and any of its possessions and that transports at least one individual or package for hire from the city of origination to the city of final destination on the same aircraft, without regard to a change in the flight number of that aircraft (see 86 Ill. Adm. Code 130.321) Also included is the operation of public stands by park districts or other governmental bodies, etc., but does not include the furnishing of utility services to the public, and does not include sales that may be made by such a governmental body to the public involving the performance of a governmental function (such as the sale of motor vehicle license plates by the State of Illinois).

- b) Sales by the United States Government and by Foreign Governments

Since a state may not place the legal incidence of its taxes directly on the United States Government or on a foreign government, sales by the United States Government and foreign governments, or any agency or instrumentality of any such government, are not subject to the Retailers' Occupation Tax even though such sales may be made in Illinois. For example, sales by the United States Postal Service are not subject to Retailers' Occupation Tax.

(Source: Amended at 39 Ill. Reg. _____, effective _____)